

Assistant City Counselor Raymond Flojo responds that the defendants had no role in the delay in providing the initial disclosures, and apologizes to the Court and the parties. Mr. Flojo notes that the motion to compel was withdrawn, and asserts that the parties were not prejudiced and that he did not willfully or maliciously withhold documents. Mr. Flojo cites a Tenth Circuit case which holds that where a motion to compel was withdrawn, as here, there can be no award of fees under Rule 37. See Dataq, Inc. v. Tokheim Corp., 736 F.2d 601 (10th Cir. 1984). Although there is little case law on this point, and apparently none in the Eighth Circuit, the Court did not find any contrary authority.

The Court will therefore not impose a monetary sanction on the defendants or on Mr. Flojo, but strongly urges Mr. Flojo to be more attentive to deadlines in this matter in the future.

**SO ORDERED.**

A handwritten signature in cursive script, appearing to read "Charles A. Shaw", written in black ink.

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**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 13th day of March, 2008.